

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

74-1770 B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

P/S

DOCKET NO. 74-1770

UNITED STATES OF AMERICA
PLAINTIFF-APPELLEE
VS.
WILLIE JEMISON, JR.
DEFENDANT-APPELLANT



ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF OF APPELLANT

and appendix

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STATEMENT OF ISSUES

WHETHER APPELLANT WAS DENIED A FAIR TRIAL BECAUSE OF
PROSECUTORIAL MISCONDUCT?

WHETHER THE DISTRICT COURT ERRED IN REFUSING TO CHARGE
THE JURY OF A LESSER INCLUDED OFFENSE, SIMPLE POSSESSION
OF COCAINE?

STATEMENT OF THE CASE

Defendant was charged in a two count indictment with sales of cocaine on July 14 & 18, 1972. The Government provided an "open file" to defense counsel and limited pre-trial motions were filed. Trial commenced on January 30, 1974 and concluded on February 1, 1974 before the Honorable T. Emmet Clarie and a jury of twelve. The defendant was found guilty on both counts and sentenced to concurrent four year terms on each count pursuant to 18 U.S.C. §4208 (a) (2). A timely notice of appeal was filed.

STATEMENT OF FACTS

Defendant was charged in a two count indictment with sale of cocaine on July 14 & 18, 1972. To prove its case, the Government called Brian Esson, a Connecticut state trooper, who testified that he was introduced to the defendant by a government informant, Wilfred Yarde and thereafter purchased cocaine from the defendant at his apartment in Hartford on July 14 & 18, 1972.

The defendant did not contest the sales of cocaine but contended that he was entrapped into committing the crime. The entrapment resulted, contended the defendant, because he was habituated to cocaine and sold the cocaine for the purposes of obtaining some for his personal use and because of the insistent demands by the Government informant, Yarde, that he arrange the sales.

To establish his habituation to cocaine, the defendant called his wife, Martha Jemison and his long time friend, Jerry Harrison. Mrs. Jemison testified that the defendant's drug use commenced shortly after his service in Vietnam. At the time of the commission of the sales in question, testified Mrs. Jemison, the defendant was seriously habituated to cocaine.

Jerry Harrison, defendant's long-time friend, testified that during the period the sales were made, he counselled

the defendant in an attempt to free him from drug use.

The defendant testified that his drug use started when he was serving in Vietnam and continued when he returned to Hartford. By July 1972 his use of cocaine had become extremely serious. He lost his job, his wife and twenty five pounds as the result of cocaine use. Jemison further testified that he sold the cocaine to Trooper Esson on July 14 & 18, 1972 because he needed some cocaine for his personal use and because his friend for many years, Wilfred Yarde, the Government informant, insisted that he arrange the transactions.

To counter the entrapment defense, the Government called two major witnesses in rebuttal. The first witness, John O'Brien, a narcotics agent, testified that Jemison was involved in a conspiracy to sell cocaine to him in March of 1972, months before he sold the cocaine to Trooper Esson. The informant, Wilfred Yarde testified that he did not badger the defendant to sell the cocaine.

I. THE CONDUCT OF THE PROSECUTOR DENIED
APPELLANT A FAIR TRIAL

In two recent opinions, United States v. White, _____ F.2d _____ (2d Cir. 1973) and United States v. Bivona, 487, F.2d 443 (2d Cir. 1973), this Circuit put the United States Attorney's Office on notice that improper prosecutorial conduct will not be tolerated in the future. United States v. Bivona, supra at 447. Despite the clear warnings of this Court, the prosecutor in this case, F. Mac Buckley, embarked on a course of conduct throughout this short, 2 1/2 day trial which warrants reversal of appellant's conviction.

Cross-Examination of Appellant's Wife

The first witness called on behalf of the defendant was his wife, Martha Jemison. Mrs. Jemison testified inter alia that at the time of the sales of cocaine and for two years prior thereto defendant was habituated to cocaine. This habituation, testified Mrs. Jemison, resulted in the eventual breakdown of their marriage and separation.

During the cross-examination of Mrs. Jemison the following occurred:

Q. Do you know of any other fields of illegal endeavor that he might have been in at that time, to cause friction in your marriage?

MR. SANTOS: I am going to object, Your Honor.

MR. BUCKLEY: I can make a bona fide offer of proof, as to what I think we are driving at. I would like to make at the Bench. (TT. at 152-3)

At the bench conference, Mr. Buckley argued that Mr. Jemison was a pimp and he wanted to explore what effect this activity had on his marriage. Thereafter Jemison's counsel moved for a mistrial on the ground that the question put to Mrs. Jemison in the presence of the jury was an attempt by the Government to impeach the defendant through the cross-examination of his wife. The mistrial motion was denied. (T.T. 153-4).

In addition to the general discussions on the law of improper cross-examination set out below, the defendant relies on United States v. Rinaldi, 301 F.2d 576 (2nd Cir. 1962). The Government prosecutor in the Rinaldi case asked the defendant's wife if the defendant had even been convicted of a crime. As a result, this Court ordered a new trial. If anything the question put to Mrs. Jemison by the prosecutor in this case was so broad that it had to leave the jury with the impression that the defendant was involved in a host of criminal activities.

Shortly after this question was put to Mrs. Jemison, the prosecutor asked the following questions while holding a document in his hand:

Q. Does Mr. Jemison support you?

A. No.

Q. Is he under Court order to support you?

A. No.

Q. Are you positive of that?

A. Positive.

Q. Since you have been separated - - -

A. Yes.

Q. - - you have not received support from him?

THE COURT: Your answer, verbally?

THE WITNESS: No.

THE COURT: Yes or No?

THE WITNESS: No.

MR. BUCKLEY: May I approach the Bench with counsel?

(T.T. at 165)

At the bench conference the prosecutor claimed that in 1970 the defendant was arrested for non-support. The Government did not have a support order. On this basis the District Court prohibited examination into this area. (T.T. 166-7).

Once again the Government attempted to impeach the



defendant through the cross-examination of defendant's wife. Since arrests and misdemeanor convictions cannot be used to impeach a defendant, this Court should not permit the Government to use this tactic through the cross-examination of defendant's wife. Although the jury never heard of the non-support arrest, the fact that Mr. Buckley put the above questions to Mrs. Jemison and waived the record of arrest in front of the jury (T.T. at 165) it is clear that the unmistakable impression that the defendant did not support his wife was communicated to the jury.

Cross-Examination Of Defendant And Comments In Front Of Jury.

The same pattern of improper cross-examination documented above continued when the defendant took the stand. On direct examination, the defendant testified that he was entrapped into committing the cocaine sales on July 14 & 18, 1972 because of his own habituation to cocaine and because of the overtures of the Government informant, Wilfred Yarde. Jemison testified that on both occasions in question he obtained the cocaine for Yarde from an individual known as Blue. During cross-examination the following transpired:

MR. BUCKLEY:

Q. Mr. Jemison, this fellow Blue, does he use cocaine?

MR. SANTOS: I object, your Honor. What Blue did has no relevancy in this case.

THE COURT: Sustained.

BY MR. BUCKLEY:

Q. Mr. Jemison, do you know people who sell drugs?

MR. SANTOS: I object, your Honor.

MR. BUCKLEY: I will show the relevancy, your Honor.

MR. SANTOS: If he has a specific inquiry, that's one thing. But, I object.

MR. BUCKLEY: He can testify that he was knowledgeable on - -

THE COURT: I think the better procedure, Counselor, to avoid any error in this trial, if you have some specific point that you want to bring out, specific incidents, you may do so; whether he had dealings, or had conversations, or whether he made representations, to be more specific.

MR. BUCKLEY: Your Honor, Mr. Santos asked this man questions about drug use, to try to show that he is knowledgeable; that this had some effect on his mind at the time of the sale.

I am going to play upon the same thing that Mr. Santos played upon; that he is knowledgeable. I want to ask him questions about drug use and selling.

THE COURT: Why don't you ask him a general question: "Are you generally acquainted with the dealings of drugs?" Whether it is cocaine or marijuana or heroin - - whatever area you want to question him on. And let him tell you.

(T.T. 275-77)

Since Berger v. United States, 295 U.S. 78 (1935) it has been clear that the conduct of a prosecutor in cross-examination may deny a defendant a fair trial. It is improper for a prosecutor "to suggest by leading questions on cross-examination of appellant that he had participated in specific acts of criminal conduct not resulting in convictions, other than those which he was charged". Thurman v. United States, 316 F.2d 205, 206 (9th Cir. 1963).

Cross examination of a defendant as to suspected acts of criminal conduct not resulting in a conviction has been condemned in this Circuit. United States v. Provoo, 215 F. 2d. 531 (2nd. Cir. 1954). In remanding for a new trial, the Court in Provoo, supra held that the cross-examination of defendant as to whether he was a homosexual denied him a fair trial. The Court noted that "...specific acts of misconduct not resulting in conviction of a felony or crime of moral turpitude are not the proper subject of cross-examination for impeachment purposes". United States v. Provoo, supra at 536.

The questions put to the defendant by the prosecutor need not cover hundreds of pages of a transcript, as was the case in Provoo, supra, to be prejudicial. For example, in Pearson v. United States, 192 F.2d 681 (6th Cir, 1951) a new trial was ordered for a defendant who was asked during cross-examination whether he had been previously convicted of receiving stolen property on a specific date, when he had not been so convicted. To the same effect that one or two highly prejudicial questions can require a new trial is Oliver v. United States, 202 F. 2d 521 (6th Cir. 1953); also see, United States v. Rinaldi, 301 F. 2d 576 (2nd Cir. 1962).

In addition to questions suggesting that a defendant has been convicted of crimes when there is no support for such a contention, United States v. Haskell, 327 F. 2d 281 (2nd. Cir. 1964), other types of prejudicial questions have also been condemned. The Court in United States v. Perlstein, et al, 120 F. 2d 275 (3rd. Cir. 1941) ordered a new trial because of questions suggesting that the defendant was linked to a county political leader in a vast criminal scheme. Questions asked of a witness for the prosecution which insinuated that the defendant was involved in prior dealings with counterfeit money or associated with known counterfeiters was frowned upon by the Third Circuit in United States v. Meisch, 370 F.2d 768 (3rd Cir. 1966).

This Circuit has had occasion to reverse for new trials a number of cases dealing with improper prosecutorial cross-examination. United States v. Puco, 436 F.2d 761 (2nd Cir. 1971); United States v. Tomaiolo, 249 F.2d 683 (2nd Cir. 1957); United States v. Maloney, 262 F.2d 535 (2nd Cir. 1959).

By the questions put to appellant's wife and appellant the prosecutor suggested to the jury that: (1) Jemison was involved in other "fields of illegal endeavor"; (2) Jemison did not support his wife; (3) Jemison associated with drug dealers. All of this occurred despite the fact that Jemison had no prior convictions at the time of this trial!

Reference to Invocation Of Fifth Amendment.

Prior to taking the stand, the Government advised the defendant that it intended to inquire into a "prior similar act". That act involved an incident in Springfield, Massachusetts on March 5, 1972 wherein the defendant was accused of conspiring to sell cocaine to a federal agent. Defendant is awaiting trial on this charge in the District of Massachusetts. When defendant was asked about this incident during cross-examination, he invoked his fifth amendment privilege and Judge Clarie correctly instructed the jury that the invocation of the privilege was a constitutionally protected right and no inference of guilt could be drawn from the assertion of that right. (T.T. at 268 and 309) Despite these precautions taken

by the District Court, the prosecutor during the following exchange suggested that the defendant was hiding behind the fifth amendment shield:

Q. It is your testimony that you weren't selling drugs to support your habit; is that correct?

MR. SANTOS: I am going to object to the general questions. I don't think it is a proper way to do what Mr. Buckley is trying to do.

MR. BUCKLEY: It is cross-examination.

THE COURT: Don't interrupt. Go ahead, Mr. Santos.

MR. SANTOS: The general question, you know, did you ever sell drugs to feed your habit - - I don't think it is proper to do what Mr. Buckley wants to do.

THE COURT: I think that the counsel for the Government should specify the particular areas that he knows or thinks he has evidence on, and pinpoint it to those particular areas.

MR. BUCKLEY: First, I think I should start, did he ever sell drugs on other occasions? Now he has taken the Fifth.

(T.T. 278-9)

Reference By Prosecutor To The Fact That The Defendant Was Laughing.

In rebuttal the Government called Wilfred Yarde, the informant the defendant claimed entrapped him. During the

cross-examination of Yarde by defense counsel, the following occurred:

Q. And that \$100 was paid to you as a result, was it not, if you know, of your successful efforts in the first transaction?

A. No, sir.

Q. Was that paid to you before the - -

A. No.

Q. Let me finish the question. Was that \$100 paid to you before the transaction was concluded?

A. No, sir.

Q. It was paid to you after the transaction was concluded, wasn't it?

A. It was offered to me. I said I didn't want it.

Q. You took it?

A. Well after he said "It is there for you", I said - -

MR. BUCKLEY: Your Honor, I hate to do this in front of the jury, but I would like to ask Mr. Santos to ask the Defendant not to be laughing. I could hear it, and I will ask the Court to tell him not to do it. They are not watching him perform.

MR. SANTOS: Your Honor, in light of the prosecutor's remark, your Honor, and in light of that comment - - that I think is completely an improper one in front of the jury, as Mr. Buckley, of course, knows -- I would move this Court declare a mistrial.

THE COURT: A mistrial is denied. The point is, the jury will disregard the comments of the prosecutor. They would be better made at the Bench, if they were relevant. The jury has the right to look at any Defendant in the court, and observe him. They don't need anyone to call attention to it.

No harm has been done. The jury will disregard the remark and the comment.

Proceed.

(T.T. 416-17)

Suggestion By Prosecutor That Informant's Cooperation In Other Cases Led To Convictions.

The sole issue presented to jury was whether the informant, Wilfred Yarde, entrapped the defendant into committing the cocaine sales on July 14 & 18, 1972. Obviously the credibility of the informant was crucial to a resolution of this issue. Subsequent to his activities in this case, Yarde arranged introductions and buys in other narcotics cases. All of these cases led to convictions. Before Mr. Yarde took the stand, the Government prosecutor advised the District Court, in the absence of the jury, that he intended to elicit from Yarde that he cooperated in other cases and all the persons he cooperated against were convicted. Judge Clarie ruled that this would be prejudicial and ordered the prosecutor not to inquire into this area:

THE COURT: Your interest is in up to the date of this

arrest, isn't it?

MR. SANTOS: I am interested, for example, I plan to quire into the total amount of money that he has received as an informant over the period that he has been an informant, for purposes of motivation.

Your Honor allowed Mr. Buckley to inquire into motivation, with respect to the fact that he was afraid that his son would be addicted to cocaine --- whatever it might be.

MR. BUCKLEY: The issue is on this case, not on the later cases. If he gets into that, then I should be able to bring out that every Defendant was convicted in substantial cocaine cases.

THE COURT: I think that might be prejudicial. There is no point in convicting a man and having it reversed, and to try it all over again. That would be a foolish procedure.

(T.T. at 381-82)

The District Court further ruled that the defense could inquire into payments Yarde received in other cases but the Government could not inquire into the outcome of those cases.
(T.T. 382-85)

During cross-examination, Yarde gave confusing and contradictory answers as to other monies he received as an informant (T.T. at 422-24). To clarify the record, defense counsel asked for a bench conference and inquired of the prosecutor as to whether Yarde was telling the complete truth. The prosecutor stated that other payments were made (T.T. 439) but if this line of questioning were allowed he would "go into each and every case he worked on for the Government."

(T.T. 438) The Court ordered the prosecutor to bring out the other payments. (T.T. 441).

After eliciting this information (T.T. 442-43), the prosecutor inquired into other cases Yarde cooperated in, the area the District Court had previously ruled could result in reversal of any conviction that might result:

Q. All right. Now, do you presently recall the names of the individuals that you got that money for working on? Yes or No? I don't want to know the names, but do you recall the names of them?

A. I can't remember.

MR. SANTOS: I object at this point.

MR. BUCKLEY: This is --

THE COURT: Just a moment. I don't know how far you are going, what else are you going to bring out?

MR. BUCKLEY: I have one more question.

THE COURT: One more question?

MR. BUCKLEY: I want to ask if he is aware of the results of what happened on any of those cases on which he was paid.

MR. SANTOS: If your Honor please, this is the third time now that the prosecutor has again made statements that he knows are improper. And I think, your Honor, he made a record number of mistrial cases in this case, and I think the comments -- I move for a mistrial.

THE COURT: The motion is denied.

(T.T. at 443-4)

As a result of this conduct, the defendant moved for a mistrial at the conclusion of the evidence. The motion was denied. (T.T. at 497)

Improper Summation

In United States v. Bivona, 487 F.2d 443 (2nd Cir. 1973) this Court again condemned the practice by some prosecutors of asserting their personal belief in the defendant's guilt. Recognizing the impropriety of such a tactic, Judge Clarie warned both the prosecutor and defense counsel not to express their personal belief in the defendant's guilt or innocence during summation. (T.T. at 502).

Despite this Court's decision in Bivona, supra and the admonition of Judge Clarie, the prosecutor asserted his personal belief in the defendant's guilt while placing the imprimature of the government on prosecution witnesses in his summation. Set forth below are the relevant prejudicial comments:

"Then we have --- a little point on credibility -- the fact that he tried to tell us that the agent told him that Mr. Yarde was the infromant, after they arrested him. Are you going to believe that?

You saw the attempt, I think, that the Government went to, to protect this man. We called him as a last key

witness in the case -- almost the last witness, because he had to go on with Agent O'Brien. There is no question that we weren't going to put the man on until certain facts were placed in issue.

Would we, the Government agents, after they arrested Mr. Jemison, and hear evidence of a purported threat in this case, would you believe that we would tell Mr. Jemison, when he was arrested in October, 1972, that Wilfred Yarde, also known as Yat, was the man who did him in? I submit to you that that is incredible.
(T.T. at 512-13)

I submit that he went to the apartment, and his wife lied -- he didn't have anything in his pocket. He had it in his bedroom drawer, just like Trooper Esson said. Because it was a good place to keep it, because he didn't live there anymore. People wouldn't think that he had stuff there. ...(T.T. at 514)

No matter what set of facts you believe -- even if you believe his set of facts, that he gave it to Yat, he is guilty of selling the cocaine. And he was not entrapped. Every one of those things he did reeks of professionalism, on these two transactions...(T.T. at 515)

But, I submit to you that Mr. Yarde's testimony is more credible if you take Mr. Jemison's own testimony along with it, that he was not put upon to sell this cocaine; that he was ready, willing and able to do it.....(T.T. at 517)

I submit to you that he was not a high class junkie; that he was a high class dealer, and he was a professional. And he may have been a pimp, but he was a very good drug dealer. On the days that he talked about, the 14th and 18th, and March 5th, he wasn't out watching women, he seemed to be watching his drugs, as a professional would do. And he must have needed a good profession to support this habit, that he tried to tell you about.

I submit that he was a professional. And he was a high class one. But, he was not a junkie. He was a dealer. And the Government has proven that.
(T.T. at 519-20)

After making these remarks, the prosecutor concluded his summation with this highly prejudicial comment:

Now, if you people go into that room on this evidence and find that this man was entrapped, then

I would submit that you might yourselves have
to be wild as reindeers. You have to ask your-
selves these questions: Are you going to believe
that the first time that it did happen in March,
1972, that Mr. Jemison was so under the influence
of drugs that he can't remember it happening, and
that he didn't lie to you, and just can't
remember, even though he said it never happened?
(T. T. 522-23)

Defense counsel noted his objection to these comments at
the bench and moved for a mistrial. The motion was denied.
(T.T. at 528-30).

This Court should keep in mind that the improprieties
detailed in this brief occurred during a short 2 1/2 day
trial. The Government's case-in-chief and rebuttal
lasted only one day. Thus the conduct of the prosecutor
had an even greater impact because of the short duration
of the trial.

Apparently the stern admonition of this Court in the
White and Bivona cases, supra, have failed to deter over
zealous prosecutorial conduct. Only by reversing this
conviction will the message reach the office of the United
States Attorneys.

II. THE DISTRICT COURT ERRED IN FAILING
TO CHARGE THE JURY THAT IT COULD FIND
THE DEFENDANT GUILTY OF SIMPLE
POSSESSION OF COCAINE.

The indictment in this case was in two counts. It charged the defendant with sale of cocaine on July 14th and 18th, 1972. It did not contain any simple possession or possession with intent to sell counts.

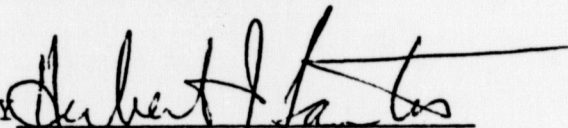
The defendant requested the Court to charge the jury that it could find the defendant innocent of sale of cocaine but guilty of simple possession, a misdemeanor. It was the defense's position that simple possession is a lesser included offense to a charge of sale. The Court refused to give the charge. (T.T. at 502)

We submit that the failure of the District Court to give this charge was error. The jury could have found the defendant to be illegally in the possession of the cocaine but entrapped into its sale.

CONCLUSION

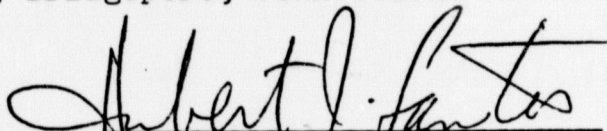
Based on the foregoing, appellant respectfully requests that this Court order a NEW TRIAL.

THE APPELLANT
WILLIE JEMISON, JR.

BY 
Hubert J. Santos
Federal Public Defender
450 Main Street
Hartford, Connecticut

CERTIFICATION

This is to certify that a copy of appellant's brief and appendix was mailed to the Assistant United States Attorney, 915 Lafayette Boulevard, Bridgeport, Connecticut


Hubert J. Santos

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 74-1770

UNITED STATES OF AMERICA
PLAINTIFF-APPELLEE
VS.
WILLIE JEMISON, JR.
DEFENDANT-APPELLANT

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF CONNECTICUT

APPENDIX OF APPELLANT

HUBERT J. SANTOS
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UNITED STATES DISTRICT COURT

T. EMERY CHARTER

D. C. Form No. 100 Rev.

H 373

TITLE OF CASE

ATTORNEYS

THE UNITED STATES

For U. S.:

vs.

WILLIE JEMISON, JR.

Stewart H. Jones, US Attorne
Randolph G. Roeder, Asst. US Att
450 Main St., Hartford, Conn

For Defendant:

Hubert Santos, Pub. Def.
450 Main St.
Hartford, Conn.

STATISTICAL RECORD

COSTS

DATE

NAME OR
RECEIPT NO.

REC.

DISB.

J.S. 2 mailed

Clerk

J.S. 3 mailed

Marshal

Violation U. S. Code

Docket fee

Title 21

Sec. 841(a)(1)

RECEIVED

MAY 22 1974

U. S. ATTORNEY'S OFFICE
HARTFORD, CONNECTICUT

1972

PROCEEDINGS

11/6 The Grand Jury at Bridgeport returned a True Bill of Indictment charging violation of 21 USC 841(a)(1) in two counts - knowingly and intentionally distribute and dispense a controlled substance, (Cocaine II). Summons to issue. (Zampano, J.) m-11/7/72

11/7 Summons issued in duplicate and with certified copy of the indictment handed US Marshal for service.

11/10 Certified mail returned from P.O. undelivered. (Summons)

11/20 Continued for 2 weeks. (Blumenfeld, J.) m-11/21/72

11/21 Marshal's return showing service, filed. (Summons)

12/4 Over to Dec. 18th. (Clarie, J.) m-12/5/72

12/18 PLEA of not guilty entered to both counts. January 2nd for motions. (Clarie, J.) m 12/19/72

1973

1/16 Motion To Disqualify Certain Jurors, filed. (Defendant's)

1/19 Motion To Disclose Name and Address of Confidential Informant, filed along with Affidavit of Atty. Hubert Santos, and Defendant's Motion to Dismiss, filed.

Continued

2/5	Defendant's Motion to Transfer, filed, with endorsement thereon, "Feb. 5, 1973 Motion Granted." (Clarie, J.)m-
1/23	Application to Transfer under Rule 21B to Boston - NO decision by court. Atty Santos to report back to Court. (Clarie, J.)m-1/24/73
2/5	Motion made for a Rule 21B transfer by Atty. Santos (orally). Atty Santos to file it in writing - Defendant states he wishes this case transferred to Mass. where he will plead guilty to charge on H 373 and the Mass. charge Motion to transfer Granted on conditions made in open Court on this matter. All motions previously filed to go off with prejudice. Court Exh. A, letter dated 1/29/73, filed. (Clarie, J.)m2/8/73
2/7	Certified copies of Motion to Transfer with endorsement thereon; Indictment, Docket Entries; Letter to Defendant from Hubert J. Santos, Asst. Fed. Pub. Def. (Court Exh. A), and original JS3 mailed to Clerk, District of Mass.
2/14	Acknowledgement received and filed from Dist. of Mass. for documents mailed on 2/7/73.
2/15	Court Reporter's transcript of proceedings held on February 5, 1973, filed in Hartford. (Sperber, R.)
2/21	Transcript of proceedings held on 2/5/73 mailed to Dist. of Mass. attention of Russell Peck, Clerk.
2/26	Receipt from Dist. of Mass. for documents mailed on 2/21/73, filed.
1972	Court Reporter's Note of Proceedings held on December 18, 1972, filed in Hartford. (Sperber, R.)
12/19	1973
1/17	Court Reporter's Notes of Proceedings held on December 18, 1972, filed in Hartford. (Sperber, R.)
1/17	Court Reporter's Notes of Proceedings held on November 20, 1972, filed in Hartford. (Collard, R.)
1/17	Court Reporter's Notes of Proceedings held on December 4, 1972, filed in Hartford. (Sperber, R.)
4/19	Court Reporter's Notes of Proceedings held on February 5, 1973, filed. (Sperber, R.)
3/1	Court Reporter's Sound Recording of Proceedings held on December 18, 1972, filed in Hartford. (Sperber, R.)
1973	
7/5	Certified copy of docket sheet and Order of Hon. Frank J. Murray filed. "ORDERED that this case be transferred back to the U S. Dist. Court for the Dist. of Conn." from the Dist. of Mass. since defendant was to plead guilty in the Dist. of Mass. but stated that he wished to stand on his plea of not guilty. Copies sent to Attys. Santos and Roeder.
10/9	Ready to go to end of jury list. (Clarie, J.)m-10/10/73
12/3	Magistrate's Papers Filed (Parker, Mag.)...Record of Proceedings in Criminal Cases, Warrant of Arrest with executed return thereon and Complaint.
1974	
1/28	Jury Assignment List - Ready, to pick jury tomorrow. (Clarie, J.)m1/29/74
1/29	JURY TRIAL - Atty. Santos request statement of informant, Request denied - Atty. Santos requests any information under Brady that Deft. was an addict - Govt. to comply as far as possible - Voir Dire questions filed by Atty. Santos - 2 Jurors excused for cause - 12 Jurors and 1 Alternate impanelled and sworn - Case to go forward at 10:00am tomorrow. (Clarie, J.)m1

CONTINUED ON PAGE 2

PROCEEDINGS

DATE	
1974	
1/30	JURY TRIAL CONTINUES: Jury of 13 report - Atty Santos moves to sequester Govt. witnesses and Atty. Buckley agrees - 4 Govt. Witnesses sworn and testified - Govt. Exhibits 1 & 2, filed - Govt. Witness previously sworn recalled to stand and testified - Atty. Santos moves for a mistrial - Motion Denied - Government rests at 12:57pm - Court adjourned at 12:58pm until tomorrow at 10:00am. (Clarie, J.)m-1/31/74
1/31	JURY TRIAL CONTINUES: 13 Jurors report - 3 Defendant's Witnesses sworn and testified - An in chambers conference is held concerning a member of the jury - Juror #9, Robert Hurlburt is replaced by Alternate Cohen - Government's Response to Defendant's Request to Charge and Govt's. Request to Charge, - Atty Santos moves for mistrial (3 times) - Defense rests at 3:24pm - 2 Govt. Rebuttal Witnesses sworn and testified - Court adjourned at 5:00pm until tomorrow at 10:00 AM. (Clarie, J.)m-2/1/74
2/1	Government's Further Requests to Charge, filed.
2/1	JURY TRIAL CONTINUES: jury of 12 report - Witness previously sworn, resumed stand and testified - Atty. Santos mover for mistrial - Motion Denied - Atty. Santos moves for mistrial - Motion Denied - Govt. witness, sworn and testified - Govt. Exhibits 3A, 3B & 3C, filed. Previous witness, resumed stand and testified - Govt. rests on rebuttal at 12:38pm - Witness previously sworn, resumed stand and testified on sur-rebuttal - Defendant rests at 12:45pm. Atty. Santos makes Motion for Judgment of Acquittal or Mistrial - Motions denied - Atty. Santos moves to strike testimony of Agt. O'Brien and Motion for Mistrial - Both Motions Denied - Stipulation that Court Will enter a not guilty plea on H-578 and parties stipulate that Indictments in H-373 and H-578 are the same - Govt. summation from 2:00pm to 2:24pm - Defense summation from 2:25 to 2:42pm - Govt. rebuttal from 2:43pm to 2:47pm - Court commences charge at 3:01pm and ends at 3:29pm - Jury retires at 3:30pm - Atty Santos states exceptions to charge - Charge to stand - Indictment and exhibits given to jury at 3:33pm - Jury returns, Max Schlar, Foreman, at 3:49pm with verdict of GUILTY on both counts - Jury polled at request of Defense Counsel - Atty. Buckley moves for incarceration without bond until disposition - Bond set at \$25,000.00 with full surety - Bond to be revoked in any threats are made on behalf of defendant. Form B with instructions given to Atty. Santos. Court adjourned at 4:03pm. (Clarie, J.)m-2/4/74
2/11	Stipulation, filed along with ORDER (Clarie, J.)m-2/15/74. ORDERED that the defendant shall impose a \$25,000 non-corporate surety bond subject to the following conditions: a. The defendant shall post \$2,500.00 with the Clerk of the Federal District Court b. The defendant and his co-owner, Martha Jemison, shall post with the Clerk of the Court the deed to 236 Pembroke Street, Hartford, Connecticut and appropriate notice of said posting shall be filed in the Hartford Land Records c. The defendant and the co-owner, Robert Jemison, shall post with the Clerk of the Court the deed to 34-36 Magnolia Street Hartford, Connecticut and appropriate notice of said posting shall be filed in the Hartford Land Records d. Henry Jemison, Robert Jemison, brothers of the defendant and Alma Jones, the defendant's fiancée, shall sign said bond as sureties.

CONTINUED

3

PROCEEDINGS

DATE
1974

2/13	Bond in the amount of \$25,000.00 with \$2,500.00 cash security and mortgage deeds security per Court Order of Feb. 11, 1974, and signatures of Henry Jemison, Robert Jemison and Alma Jones as sureties, filed. (Clarie, J.)m-2/14/74
2/25	Modification of Terms of Bond, filed. "APPROVED" (Clarie, J.)m-2/27/74 ".....sureties of the bail bond have no objection to his leaving the District of Conn. for the period of Feb. 24 thru Feb 28 for the purpose of attending the annual Savior's Day Convention of the Religion of Islam in Chicago, Illinois." Copies sent to Attys. Buckley and Santos.
3/7	Mortgage Deed #368849 from Willie X. Jemison and Robert Lee Jemison to USA and #368850 from Willie Lee Jemison and Martha Jemison to USA, filed. Kept in safe, file drawer #4.
4/22	Disposition continued to 5/13/74 (Clarie, J.)m-4/23/74
4/30	Evidentiary Hearing - Re Def. Attempting to Bribe Govt. Witness - 2 Govt. witnesses, sworn and testified - Defendant sworn and testified. Hearing re sentencing - 2 Defendant's witnesses, sworn and testified - Defendant sworn and testified.
"	DISPOSITION - two counts - 4 yrs. imprisonment pursuant to 18 USC 4208(a)(2) followed by 3 yrs. special parole pursuant to 21 USC 841(a)(1)(A) on each count to run concurrently. Deft. advised by Court of Right to Appeal and to secure private counsel. Same bond to continue. (Clarie, J.)m-5/1/74
5/1	Judgment and Commitment, filed. (Clarie, J.)m-5/2/74 Two attested copies handed US Marshal at Hartford.
5/2	Judgment and Commitment filed on 5/1/74 VOIDED along with two attested Marshal's copies... See Cr. H-578.
5/3	ORDER FOR DISMISSAL of the Indictment, filed. (Clarie, J.)m-5/8/74

H 573

TITLE OF CASE

ATTORNEYS

For U. S.:

vs.

Stewart H. Jones, US Attorney
Randolph C. Roeder, Asst. US Atty
450 Main St., Hartford, Conn.
F. Mac Buckley, Spec. Atty.

For Defendant:

Hubert Santos, Pub Def.
450 Main St.
Hartford, Conn.

DATE
1973

PROCEEDINGS

10/2

The Grand Jury at New Haven returned a True Bill of Indictment charging violation of 21 USC 841(a)(1) in 2 counts - did knowingly and intentionally distribute and dispense a controlled substance, (Cocaine, II). No process to issue at this time. (Zampano; J)ml0/3/73

1974

**	2/1	Stipulation that Court will enter a not guilty plea on H578 and parties stipulate that Indictments in H-373 and H-578 are the same. (Both stipulations entered during Jury trial.
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2/11

Stipulation, filed along with ORDER (Clarie, J.)m-2/15/74.
ORDERED that the defendant shall impose a \$25,000 non-corporate surety bond subject to the following conditions:

a. The defendant shall post \$2,500.00 with the Clerk of the Federal District Court

b. The defendant and his co-owner, Martha Jemison, shall post with the Clerk of the Court the deed to 236 Pembroke Street, Hartford, Connecticut and appropriate notice of said posting shall be filed in the Hartford Land Records. . . . CONTINUED

CONTINUED

5

DATE 1974	PROCEEDINGS
2/11	continued... c. The defendant and the co-owner, Robert Jemison, shall post with the Clerk of the Court the deed to 34-36 Magnolia Street, Hartford, Connecticut and appropriate notice of said posting shall be filed in the Hartford Land Records d. Henry Jemison, Robert Jemison, brothers of the defendant and Alma Jones, the defendant's fiancée, shall sign said bond as sureties.
2/13	Bond in the amount of \$25,000.00 with \$2,500.00 cash security and mortgage deeds security per Court Order of Feb. 11, 1974 and signatures of Henry Jemison, Robert Jemison and Alma Jones as sureties, filed. (Clarie, J.) m-2/14/74
2/25	Modification of Terms of Bond, filed "APPROVED" (Clarie, J.) m-2/27/74 "...sureties of the bail bond have no objection to his leaving the District of Conn. for the period of Feb. 24 thru Feb. 28 for the purpose of attending the annual Savior's Day Convention of the Religion of Islam in Chicago, Illinois." Copies sent to Attys. Buckley and Santos.
3/19	Court Reporter's Notes of Proceedings held on January 30, 31, and February 1, 1974, filed in Hartford. (Sperber, R.)
2/1	The trial in Criminal Case No. H-373 involving this defendant having commenced on January 29, 1974, and having gone forward on January 30, 31 and February 1, 1974 and on February 1, 1974 the jury having returned a verdict of guilty on both counts, and it appearing to the Court that the trial should have been held in Criminal Case No. H-578 for the same defendant instead of Criminal Case No. H-373, the Court orally ordered (see court reporter's transcript) that disposition will proceed in Criminal Case No. H-578. Clarie, J. (See docket sheet for trial minutes in Crim. #H-4373)
4/30	DISPOSITION: Imprisonment for four years on each of counts one and two to run concurrently with each other, pursuant to 18 USC 4208(a)(2) followed by 3 years special parole pursuant to 21 USC 841(a)(1)(A) on each count. Deft. advised by Court of Right to Appeal and to secure private counsel. Same bond to continue. (Clarie, J.) m-5/1/74.
5/1	Judgment and Commitment, filed and entered. Clarie, J. m-5/2/74. Two attested copies handed U. S. Marshal at Hartford. The Judgment and Commitment entered in Criminal Case No. H-373 has been voided and an Order of Dismissal has been entered in that case. Clarie, J. m-5/8/74
5/1	Notice of Appeal, filed by defendant. Copies mailed to counsel.

FILED IN 11/6, 1972
GILBERT G. BROWN, Clerk
By [Signature]
Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA
v.
WILLIE J. MISON, JR.

CRIMINAL NO. 4-373

INDICTMENT

The Grand Jury charges:

COUNT ONE

On or about the 14th day of July, 1972, in the District of Connecticut, WILLIE J. MISON, JR., did, knowingly and intentionally distribute and dispense a controlled substance, i.e. approximately 21.77 grams of cocaine, in violation of Title 21, United States Code, Section 841(a)(1).

COUNT TWO

On or about the 16th day of July, 1972, in the District of Connecticut, WILLIE J. MISON, JR., did, knowingly and intentionally distribute and dispense a controlled substance, i.e. approximately 20.38 grams of cocaine, in violation of Title 21, United States Code, Section 841(a)(1).

A TRUE BILL

15/ Churchill Whitworth
Foreman

7

STEWART H. JONES
United States Attorney

/s/ RANOLDPH C. ROEDER
RANOLDPH C. ROEDER
Assistant United States Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

V.

WILLIE JEMISON, JR.

CRIMINAL NO. H-373

DEFENDANT'S REQUESTS TO CHARGE

Entrapment

The defendant asserts that he was a victim of entrapment as to the crimes charged in the indictment. Where a person has no previous intent or purpose to violate the law, but is induced or persuaded by law enforcement officers or their agents to commit a crime, he is a victim of entrapment, and the law as a matter of policy forbids his conviction in such a case.

On the other hand, where a person already has the readiness and willingness to break the law, the mere fact that Government agents provide what appears to be a favorable opportunity is not entrapment. Devitt & Blackmar, Federal Jury Practice and Instructions §13.13

If the evidence in the case should leave you with a reasonable doubt whether the defendant had the previous intent or purpose to commit any offense of the character here charged, and did so only because he was induced or persuaded by some officer or agent of the Government, then it is your duty to acquit him. Id.

In considering whether defendant was entrapped into committing the crimes charged in the indictment, you may consider evidence that the defendant prior to and on the date of the

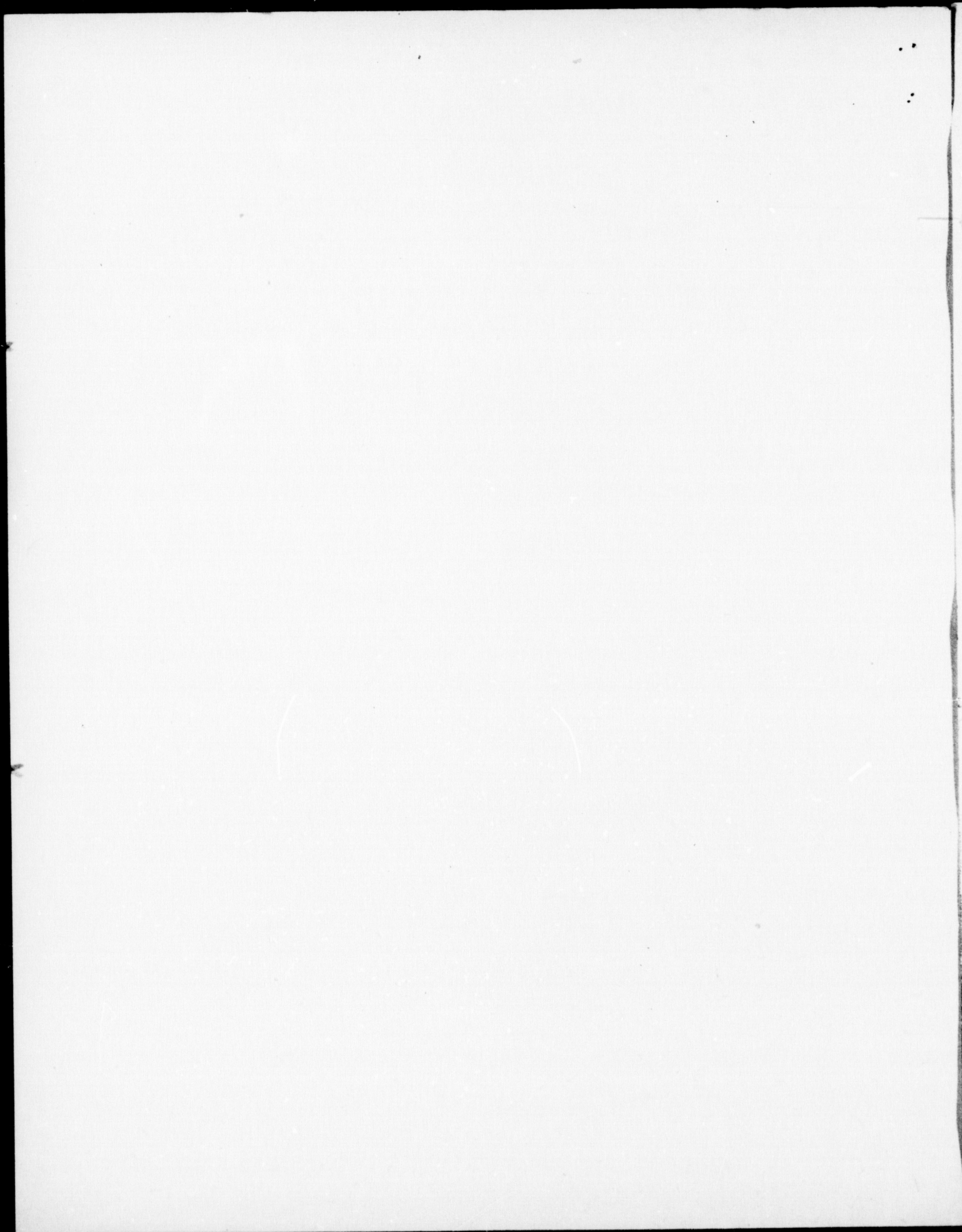
... the law. Such intent may be determined from all the facts and circumstances surrounding the case. Devitt & Blackmar, 417 F.2d at \$13.03.

In determining whether the Government has proven beyond a reasonable doubt that the defendant possessed the specific criminal intent on the dates of the cocaine sales alleged in the indictment, you may consider evidence that prior to and on the dates of the sales of cocaine defendant was habituated or used narcotics and other drugs. United States v. Henry, 417 F.2d 267, 271 (2 Cir. 1969) After your review of all the evidence if you find that the defendant lacked the specific criminal intent to commit the crime of sale of cocaine you may find him not guilty or guilty of what the law calls a lesser included offense.

Lesser Included Offense

The law permits the jury to find the accused guilty of any lesser offense which is necessarily included in the crime charged in the indictment, whenever such a course is consistent with the facts found by the jury from the evidence in the case, and with the law as given in the instructions of the Court.

So, if the jury should unanimously find the accused "Not Guilty" of the crime charged in the indictment then the jury must proceed to determine the guilt or innocence of the accused as to any lesser offense which is necessarily included in the crime charged.



The crime of sale of cocaine, which is charged in the indictment in this case, necessarily includes the lesser offense of possession of cocaine.

Testimony of Informer

You have heard testimony from, _____, a government informer. The testimony of an informer who provides evidence against a defendant for pay, or for immunity from punishment, or for personal advantage or vindication, must be examined and weighed by the jury with greater care than the testimony of an ordinary witness. The jury must determine whether the informer's testimony has been affected by interest, or by prejudice against the defendant. Devitt & Blackmar, supra at §12.02

Dated at Hartford, Connecticut this 30th day of January, 1974.

THE DEFENDANT
WILLIE JEMISON, JR.

BY _____

Hubert J. Santos
Federal Public Defender
450 Main Street
Hartford, Connecticut

CERTIFICATION

10

This is to certify that a copy of the above Request To Charge was delivered to F. Mac Buckley, Special Attorney, 450 Main Street, Hartford, Connecticut.